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December 19, 2022

**BY E-MAIL AND ECF**

The Honorable Victor Marrero  
District Judge  
United States District Court for the Southern District of New York  
500 Peal Street, Suite 1610  
New York, NY 10007

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
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Re *Stephen A. Vogel v. David Boris and Marshall Kiev*,  
Index No. 1:20-cv-09301-VM

Dear Judge Marrero:

Pursuant to Your Honor's Individual Practices Rule II(H), Standing Order 19-mc-00583, ECF Rules & Instructions, section 6, and the Stipulated Confidentiality Agreement and Protective Order (ECF No. 29) (the "*Confidentiality Order*"), we write on behalf of our client Stephen Vogel ("*Mr. Vogel*" or "*Plaintiff*") requesting leave to file under seal one exhibit to Plaintiff's Motion for Summary Judgment ("*Motion*"). This is done so at the request and in consultation with Defendants Marshal Kiev ("*Mr. Kiev*") and David Boris ("*Mr. Boris*") (together the "*Defendants*").

Under the Confidentiality Order, parties are entitled to designated documents and testimony as "Confidential" but such designation does not create the presumption that such documents should be filed under seal, and that the parties are to instead follow the Court's procedures for such filings.

During discovery, as part of meet and confer efforts, the Defendants' summarized and disclosed sensitive financial information concerning distributions they received and their subsequent sale of securities (the "*Disclosure*") and designated the Disclosure "confidential" under the Confidentiality Order. Pursuant to Your Honor's Individual Practices, a copy of the Disclosure is attached hereto.

Plaintiff must include the Disclosure in the evidentiary record to his Motion as it contains necessary information to prove his damages. Accordingly, Defendants requested and Plaintiff agreed to seek this Court's permission to file the Disclosure under seal, and to redact information

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from the Disclosure from Plaintiff's electronically-filed brief in support of the Motion, while delivering an unredacted, hard copy version of the brief to Defendants and the Court.

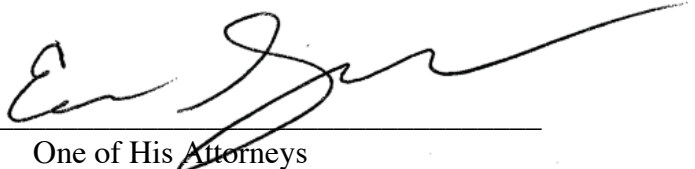
Pursuant to Your Honor's Individual Practices Rule II(H), Plaintiff advises that all parties should be granted access to the proposed sealed document.

Plaintiff therefore respectfully requests that the Court enter an Order granting Plaintiff permission to file Defendants' Disclosure under seal as part of the evidentiary record to their Motion for Summary Judgment.

The Parties are available at the Court's convenience, should the Court wish to discuss the Parties' request by telephone.

Respectfully Submitted,

STEPHEN A. VOGEL

By   
One of His Attorneys

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*Attorneys for Plaintiff STEPHEN A. VOGEL*

**Request GRANTED.** Plaintiff's request to file one exhibit to its Motion for Summary Judgment under seal as described above is Granted.

**SO ORDERED.**

12/20/2022

DATE

  
VICTOR MARRERO, U.S.D.J.